

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

MICHAEL R. LANNING,

Petitioner,

v.

BRENDA SHORT¹,

Respondent.

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No. 4:21-CV-1455 JCH

MEMORANDUM AND ORDER

This matter is before the Court on review of Michael R. Lanning’s *pro se* filing titled “Motion to Modify and Vacate Sentence.” The document has been construed as a Petition under 28 U.S.C. § 2254 for Writ of Habeas Corpus. Petitioner seeks an order from the Court requesting this Court “enjoin and modify and vacate [his] sentence” in state Court. He asserts that he was sentenced under second degree robbery when he should have been sentenced under attempted second degree robbery.

The petition is defective because it has not been drafted on a Court-provided form. *See* E.D. Mo. Local Rule 2.06(A). In addition, plaintiff has neither paid the filing fee nor submitted a motion to proceed without prepaying fees or costs. *See* 28 U.S.C. § 1915(a). The Court will direct the Clerk of Court to send petitioner the Court’s forms “Petition under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody” and “Motion to Proceed In Forma Pauperis and Affidavit in Support – Habeas Cases.”

Based on a review of Missouri Case.Net, the Court notes that notes that petitioner plead

¹Petitioner has named as respondent the State of Missouri. The proper respondent for a prisoner currently in custody pursuant to a state court judgment is the state officer having custody of the applicant. *See* 28 U.S.C. § 2254, Rule 2(a). Brenda Short, Jail Administrator of the Jefferson County Jail, is the proper respondent.

guilty to attempted robbery in the second degree and resisting/interfering with an arrest on December 1, 2015. *See State v. Lanning*, No. 14JE-CR03548-01 (23rd Judicial Circuit, Jefferson County Court). Petitioner was sentenced to fifteen years on the attempted robbery charge and a seven-year consecutive sentence on the felony resisting/interfering with an arrest. Petitioner's sentence was to be served concurrent with a sentence he received in *State v. Lanning*, No. 1422-CR03856-01 (22nd Judicial Circuit, St. Louis County Court), for possession of a controlled substance.

Petitioner served a year in a long-term treatment program in *State v. Lanning*, No. 14JE-CR03548-01 (23rd Judicial Circuit, Jefferson County Court), and after completion of the program, he was given a suspended execution of sentence. However, it appears that his probation was revoked on or about February 15, 2018, after which time he was sentenced to twenty-four months in a long-term treatment program. Petitioner was again given a suspended execution of sentence on July 9, 2019. It appears that a capias warrant was issued for petitioner relative to a probation violation on or about April 21, 2021. *Id.*

When petitioner amends his application for writ of habeas corpus, he should clarify whether he is seeking relief as to his original conviction or regarding revocation of his probation.

Accordingly,

IT IS HEREBY ORDERED that the Clerk shall substitute respondent's name on the docket to Brenda Short, the Jail Administrator at Jefferson County Jail.

IT IS FURTHER ORDERED that the Clerk of Court is directed to mail to petitioner a copy of the Court's forms "Petition under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person

in State Custody” and “Motion to Proceed In Forma Pauperis and Affidavit in Support – Habeas Cases.”

IT IS FURTHER ORDERED that petitioner shall file an amended petition on the Court-provided form within **twenty-one (21) days** of the date of this Order. Petitioner is advised that his amended petition will take the place of his original petition and will be the only pleading that this Court will review.

IT IS FURTHER ORDERED that petitioner shall clarify in his amended petition whether he is seeking relief as to his original conviction or his probation revocation.

IT IS FURTHER ORDERED that petitioner shall either pay the \$5 filing fee or submit the “Motion to Proceed In Forma Pauperis and Affidavit in Support – Habeas Cases” within **twenty-one (21) days** of the date of this Order.

IT IS FURTHER ORDERED that if petitioner fails to comply with this Order, the Court will dismiss this action without prejudice.

Dated this 14th day of December, 2021.

/s/ Jean C. Hamilton
JEAN C. HAMILTON
UNITED STATES DISTRICT JUDGE